IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 27 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VIKRAM RAIDHAN - Appellant(s)
Versus
BHOVANBHAI MEPABHAI PATEL & 2 - Defendant(s)

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Appearance :
MR HM LATHIA with MR PARAS LATHIA for Appellant(s) : 1,
MR VIMAL M PATEL for Defendant(s) : 1 - 2.
MR PRIMIT S PURANI for Defendant(s) : 1 - 2.
MR RR MARSHALL for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 26/12/2006

ORAL JUDGMENT

1. The appellant is the original claimant. He

suffered injuries in vehicular accident on 31st August, 1982 around 12:30 p.m. According to the appellant he was passing by Delux talkies situated near Nutan Saurashtra Ice Factory at Kuvadva road in Rajkot. At that time, respondent no. 1 drove the vehicle namely, the motor bike bearing registration no. GTQ 9851 in a rash and negligent manner and dashed it against the appellant. As a result of the same, he sustained injuries on his left leg. He was removed to the hospital, initially to the Government Hospital, but shortly thereafter to the Private Nursing Home of Dr. Pankaj Patel the Orthopedic Surgeon. According to him there was fracture of tibia and fibula and for the treatment he had to remain in the hospital for considerable period. He was operated upon and the injured leg was shortened by one and half inch. According to the appellant, he also experienced difficulty in climbing stairs or lifting weight etc. Hence, he preferred proceedings under the provisions of Motor Vehicles Act for obtaining compensation. Originally the claim was filed for Rs.40,000=00, but subsequently it was raised to Rs. 1 lakh. In the application, the appellant stated the aforesaid facts and also averred that because of the disability suffered by him he was unable to walk properly, do labour work, graze cattle and cultivate field. According to him, the disability was of permanent nature. He has also averred that because of the injury to the head, his memory was adversely affected and

consequently he had to give up studies half way. In support of his claim the appellant has produced documentary evidence, including the medical certificate regarding his disability.

2. Respondent no. 2 the owner of the offending vehicle contested the claim by filing written statement at Exh. 46. In the said written statement all the averments made by the appellant were denied. It was averred that there was no negligence on the part of respondent no. 1 driver of the offending vehicle and, therefore, the appellant was not entitled to receive any compensation. The respondent insurance company also filed reply at Exh. 48. It was averred that there was no negligence on the part of the offending vehicle and the appellant himself was responsible for the injuries caused to him. The insurance company averred that the driver of the motor bike did not hold valid licence and, therefore, the insurance company was not liable to satisfy the award. Further by submitting an application at Exh. 5, respondent no. 3 made amendment in the written statement and took the ground that respondent no. 2 had played fraud upon the insurance company and the insurance was taken only after the accident. Hence, the insurance company was not at all liable to satisfy the award.

3. The parties led oral as well as documentary

evidence to substantiate their respective cases. On the basis of the material produced before it, the Claims Tribunal, Rajkot arrived at a conclusion that the accident occurred solely due to rash and negligent act of respondent no. 1. The Tribunal also held that the appellant, at the relevant time was minor and sustained injuries on account of the vehicular accident caused by respondent no. 1 due to his negligent driving. The Tribunal also assessed the compensation payable to the appellant at Rs.26,880=00. The Tribunal therefore, by judgment and award dated 8th April, 1993, awarded compensation of Rs.26,880=00 to the appellant together with 15% interest from the date of petition till realization and proportionate costs. It is this decision which is now challenged in this appeal.

4. I have heard Mr. Lathia learned advocate for the appellant and Mr. Purani appearing for learned advocate Mr. Vimal Patel, for respondents no. 1 and 2. At the outset it is stated by Mr. Lathia that an application filed by him for enhancement of the claim from Rs.1 lakh to Rs. 2 lakh, is not pressed by him. He advances his submission on the basis of the claim made before the Tribunal. According to him the Tribunal has erred in not properly assessing the quantum of compensation and in particular the compensation that could have been awarded under the head of pain, shock and suffering and future

loss of income. He has submitted that apart from the injuries caused to the left leg, the appellant also suffered injuries on his head and for that purpose he had to take treatment from Neuro Surgeon. The appellant has fits of epilepsy which has become incurable. He has submitted that because of the injury to the leg, and the resultant disability, the appellant was not in a position to do heavy work, such as cultivating field, grazing cattle etc. That has caused considerable loss of earning capacity. He has cited several decisions to substantiate his submission.

4.1. Mr. Purani learned advocate for respondents no. 1 and 2 initially submitted that the appellant at this stage cannot be permitted to enhance the claim from Rs. 1 lakh to Rs.2 lakh, but when he learnt that the appellant had not pressed the application for enhancement of the claim, he did not advance any other submission.

5. Having carefully considered the submissions of Mr. Lathia and having perused the record and proceedings of the case, which have been called for by this Court, by order dated 19th December, 2006, it clearly appears that the the appellant around 12:30 in the afternoon was proceeding on the road known as Kuvada road near Delux Cinema in Rajkot. At that time, respondent no. 1 drove the vehicle namely, motorbike bearing registration no.

GTQ 9851. It is alleged that he drove the vehicle in a rash and negligent manner and because of his negligence the accident occurred. According to the appellant, the vehicle knocked him down causing serious injuries on his left leg. The Tribunal on appreciation of oral as well as documentary evidence came to the conclusion that it was respondent no. 1 who was solely responsible for causing accident and the resultant injuries to the appellant. This finding of the Tribunal has not been challenged before this Court by the other side either by filing substantive appeal or cross objections. Hence, there is no need for me to discuss in detail this issue and give my finding upon it by re-appreciating the evidence. Nevertheless, during the course of hearing, the same has been perused by me and I do not find any error having been committed by the Tribunal on that count.

6. The next question that is to be considered is whether the quantum of compensation determined by the Claims Tribunal under various heads is just and proper. As already stated above, the Tribunal has awarded in all a sum of Rs.26,880=00 against the claim of Rs.1 lakh. To make proper assessment, first of all it is essential to appreciate the evidence with regard to injuries suffered by the appellant and the resultant effect thereof and also the evidence with regard to treatment taken by the appellant. The evidence shows that the appellant had

suffered fracture of tibia and fibula of the left leg. Initially he was admitted in the Government hospital but soon thereafter he was shifted to Private Nursing Home of Dr. Pankaj Patel. According to his evidence, he had remained in the hospital for 10 days. He was operated upon and thereafter his left leg was put in plaster cast. Even after his discharge from the hospital he was required to visit it frequently for the follow up treatment. Over and above the visit for removal of plaster the appellant had made 7 to 8 other visits to the hospital of Dr. Pankaj Patel for treatment. It may be stated here that no medical record of the hospital of Dr. Pankaj Patel is produced by the appellant. However, in his evidence, he has clearly stated that in spite of the request, Dr. Patel had not given the case papers to him. Dr. Patel was issued summons, but vide purshis at Exh. 86, Dr. Patel declared that all the record was handed over to the appellant. The appellant has further produced copies of the notice issued to Dr. Patel by his lawyer. They are at Exh. 122-123. He has stated that Dr. Patel never replied to this notice. He has stated that later on he had approached Dr. Dholakia and obtained treatment on 7 to 8 occasions. Dr. Dholakia had issued disability certificate. The witness has produced bills of medicines purchased by him at Exh. 125. The medicines are of the value of Rs.481.20 paise. He has stated that he is not able to lift weight and he is not able to walk properly.

He has further stated that he is not able to climb stairs at a stretch. He has to take rest in between and he is not able to do agricultural work. He has deposed that had he not met with the accident, he would have earned Rs.50/ to Rs.60/- per day. However, because of the light work given to him, he earned solely Rs.8 to Rs.10/- per day. According to him on the date of the deposition he was a bachelor and because of the injuries and the resultant defect, in the body, his marital prospectus have been marred. In his opinion, he would only get a lame and physically defective girl for marriage. Lastly he has stated in the examination-in-chief that whatever the expenses were made for medical treatment were incurred by his father. In the cross-examination by the learned advocate for respondent no. 2 he has stated that upon accident he had become unconscious and regained consciousness at about 5 o'clock in the evening. X-rays of the legs were taken. He has stated that his parents apprehended that he would not get proper treatment in the Government Hospital, therefore, they shifted him to the hospital of Dr. Pankaj Patel. He has further stated that he did not remember where the hospital of Dr. Dholakia was since he was only aged about 8 years at the time of accident and the treatment. He has admitted that he had gone to consult Dr. Shah for his head injury and its effect on brain but he did not know where Dr. Shah lived. In the cross-examination he has further stated that they

owned agricultural land and they obtained crop of Jowar, Bajri and Kapas. He has reiterated in the cross-examination that he was not able to climb staircase or walk properly.

6.1. In the cross-examination by the learned advocate for respondent no. 1 he has stated that he had obtained treatment of Dr. Dholakia, Dr. Pankaj Patel and Dr. Shah and except these three Doctors he had not consulted any other Doctor. In the cross-examination by the learned advocate for respondent no. 3 insurance company, he has stated that he had approached 7 to 8 times to Dr. Patel to apprise him the difficulties experienced by him and which persisted continuously even after the treatment and he was assured by Dr. Patel that it would disappear gradually.

7. Raidhanbhai Arjanbhai, is the father of the appellant. His evidence is also required to be considered here. It is at Exh. 130. This witness has stated that after the injury, treatment was obtained from Dr. Pankaj Patel and he had paid a sum of Rs.8,000/- to Rs.10,000=00 for the treatment to Dr. Patel. Since even after the operation and the incidental treatment, the appellant suffered pain, he approached Dr. Patel and complained to him about it. The witness has further stated that he was told that he could consult another Doctor also, but the

pain would remain. This witness has stated that even today the appellant is required to take treatment of Dr. Thakkar - Neuro Surgeon, who has advised long time treatment. According to the witness the appellant would be required to take the medicines for five years more. According to the witness, the charges of Doctor were Rs.40 to Rs.50/- per visit and Rs.70/- for examining the patient at the interval of three months. He has further stated that he had spent about Rs.27,000 to Rs.28,000/- in all. In the cross-examination by the learned advocate for respondent no. 1, he has admitted that he did not have any personal knowledge about the accident. He has also admitted that he did not know where Dr. Thakkar's hospital was situated. He has further stated that he had spent about Rs.20,000 to Rs.25,000/- for the treatment from the date of accident till presentation of the petition in the Court. He has denied the suggestions that he had never taken the appellant to the hospital of Dr. Pankaj Patel. In the cross-examination by respondent no. 3 insurance company, it is stated that after discharge from Dr. Patel's hospital they had been to their native place and stayed there for six months. Thereafter they took Dr. Dholakia's treatment. He has denied that for obtaining more compensation the witness had given the evidence.

7.1. Arjanbhai Harsurbhai is the nephew of witness

no. 3 for the appellant. He is the maternal uncle of the appellant. He has deposed more or less on the same line. His evidence is, therefore, not required to be discussed in detail. Witness no. 4 is Dr. Durgeshkumar P. Dholakia. Dr. Dholakia has examined the appellant on 11th February, 1985 and on 31st August, 1982. On examining the appellant, he has found as many as 9 injuries on different parts of the body, mostly on the legs. In his opinion, there was shortening of leg by 1 cm. According to him, the appellant suffered 15% disability. He has issued medical certificate to that effect which is at page 136 of the compilation submitted by the appellant. The Doctor has deposed that the appellant had fractures of tibia and fibula. In his opinion, the disability *vis-a-vis,* body was 15%. In the cross-examination by the learned advocate for the respondents he has stated that in the medical record, he has mentioned about shortening of the leg and the resultant disability. He has also stated that on what basis he has assessed the disability at 15%. He has deposed that there was shortening of the leg because of the injury to the bone.

8. Thus, the aforesaid evidence of this witness clearly establishes that the appellant had suffered fracture of tibia and fibula of left leg and due to the injuries suffered by him, apart from the strain of medical treatment, he was undergoing considerable

discomfort and pain, even years after the accident. He was not able to carry out heavy work like working in the field and grazing cattle etc. The appellant has stated in his evidence that instead of earning Rs.50/- to Rs.60/- per day, he was able to earn only Rs.10/- to Rs.20/- per day. There is no reason to discard this version of the appellant. There is no effective cross-examination on this aspect. Further the material on record shows that there was shortening of the leg and disability was of permanent nature. The medical evidence further shows that the appellant was not in a position to walk properly or climb stairs at a stretch. Naturally when all this handicap is mentioned in detail which adequately stands corroborated by medical evidence, it can safely be presumed that the appellant was telling truth that he was undergoing pain and discomfort and the pain is likely to remain forever. The Tribunal has assessed the compensation which can be payable under the head of pain and suffering at Rs.10,000=00. Of course, the appellant has made claim of Rs.50,000=00 under that head, as per the submissions made by Mr. Lathia, in my opinion, it is an exaggerated claim. Nevertheless, the appellant deserves more compensation under this head, in spite of the fact that proper material in the form of medical record of the hospital of Dr. Pankaj Patel has not been brought on record and there is enough material to come to conclusion that the injuries suffered by the appellant

were quite serious and that has left almost permanent defect and pain for the appellant. In the case of **Babu Mansa v. Ahmedabad Municipal Corporation**, the Division Bench of this Court has rendered decision which is reported in **1978 ACJ pg. 485**, wherein, this Court has awarded a sum of Rs.15,000=00 for shortening of the leg at 1 cm. Here, in the present case because of the fracture of tibia and fibula according to the appellant, there is shortening of the leg by one and half inch. However, as per the evidence of Dr. Durgeshkumar P. Dholakia shortening of the leg is 1 cm. He has also stated that it had become thinner by 1.5 cm and its flexibility was considerably restricted. He has opined that the leg had gone weak and it had permanent scar of 3 x 2 cm. There was continuous pain and swelling. In view of this, in my opinion the appellant deserves to be awarded additional sum of Rs. 15,000=00 under this head. This is also keeping in view the fact that in this case the accident had occurred much later than the case before the Division Bench referred to above. Thus, in all, the appellant is entitled to receive a sum of Rs.25,000=00 under the head of pain and suffering.

9. Incidentally, I may also refer to certain decisions that have been cited by Mr. Lathia to substantiate his claim of Rs.50,000=00 under the head of pain and suffering. The first decision relied on by Mr.

Lathia is **Gujarat State Road Transport Corporation v. Suryakantaben D. Acharya & Ors., reported in 2001 (2) GLR at pg. 1777**. It is a judgment of Division Bench. On perusal of the said decision, it clearly appears that the same cannot be applied here. It is a case of retired judicial officer who expired in a vehicular accident who even at that time was Presiding Officer for Labour Court. He had remained in the hospital with multiple injuries for about 14 days. On the 14th day, he expired. The facts show that there were multiple injuries suffered by him including the head injuries. He was given extensive treatment and there were various surgical operations performed on him, blood transfusion was given and he was shifted from one hospital to another during the period of 14 days. The injuries were on head and abdomen and during hospitalization he suffered excruciating pain. On account of these injuries, under this head, the Division Bench awarded a sum of Rs.50,000=00. The facts of the present case however, do not match at all with the facts of that case. On the contrary, the said decision shows that even for such grievous and painful injuries this Court awarded only Rs.50,000=00 under the head of pain and suffering. In the present case, there is merely fracture of tibia and fibula and hospitalization is of 16 days. So far as the head injury is concerned, though it is deposed to by the appellant and his father, no documentary evidence is produced to confirm this fact. Neither Dr. Dholakia who

has given evidence before the Tribunal nor any other Doctor including Dr. Niranjan Shah and Dr. Pankaj Patel has issued any certificate with regard to injury to the head. Dr. Thakkar who has stated to have given treatment for head injury has not been examined, nor any medical certificate issued by Dr.Thakkar has been produced on record by the appellant. In this view of the matter, it is difficult to accept the version of the appellant with regard to head injury. So far as other decisions are concerned, which have been relied on by Mr. Lathia to support the claim under the head of pain and suffering, I have perused them and I find that they are nowhere near the facts of the present case. Hence, I do not propose to discuss them in this judgment.

10. So far as the loss of future earning is concerned, it appears that the Tribunal has committed obvious error. The Tribunal has taken actual income of appellant at Rs.400/- per month even when the appellant has stated that he and his father owned agricultural land and produced documentary evidence to substantiate this evidence. He has further stated that had he not been injured in the accident, he would have easily earned a sum of Rs. 15,000 to Rs.16,000/-. But because of the disability suffered by him he was not in a position to generate more income. Thus, even if his income is taken to be at Rs.30/- to Rs.40/- per day, it would be around

Rs.800/- to Rs.900/- per month. There is always scope for increase in the income and hence the future income can be safely assessed at Rs.1,000/- per month and the loss of earning capacity can be assessed at Rs.150/- per month, since the disability is assessed by the doctor, in respect of the entire body is 15%. The Tribunal has applied the multiplier of 20, which in my opinion is just and proper and hence under the head of loss of future earning Rs.36,000/- can safely be awarded. The Tribunal has awarded Rs.7,680/- under this head and, therefore, additional amount of Rs.28,320/- is required to be awarded under this head. Further so far as the expenses incurred by the father of the appellant for treatment is concerned, he has stated in his evidence that he had spent about Rs.25,000 on account of it. The Tribunal has however, awarded Rs.5,000/- under this head. It is quite natural that the appellant would not preserve any account for the expenses incurred by him since at the relevant time he even might not have known that such claim petition could be filed for obtaining compensation. Considering the duration of hospitalization, operations, medicines etc., and also the follow up treatment, it appears that the amount awarded by the Claims Tribunal is on lower side. On that count, the appellant deserves to have additional amount of Rs.10,000=00. Thus, he deserves to have in all Rs.15,000=00 under the head of medical expenses. Under other heads, the amount awarded by the

Tribunal appears to be reasonable and no interference is required by this Court. Thus, the appellant is entitled to receive additional sum of Rs.53,320=00 over and above the award made by the Claims Tribunal. The insurance company is directed to deposit the additional amount together with interest at the rate of 15% from the date of petition till realization and the proportionate costs within a period of three months from the date of this judgment with the Tribunal.

11. In the result, the appeal is partly allowed.

R & P to be re-transmitted to the Tribunal forthwith.

[Akshay H. Mehta, J.]

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